COURT FEE 5 RS भारत INDIA पाँच रुपये FIVE RUPEES CANCELLED

COURT FEE 5 RS भारत INDIA पाँच रुपये FIVE RUPEES CANCELLED

(3)

(1)

Office

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 1852 **/2004**

PETITIONERS : (A- Defendent No 6 To 8A)

1. Ratanlal Kedia
   S/o Shri Kishan Kedia
   Age 56 years.
2. Smt. Heeradevi W/o Ratanlal Kedia Age 49 years,
3. Anand Kumar Kedia S/o Ratanlal Kedia age 31 year all residence Kotra road Raigarh, Distt. Raigarh

P. R. No. 1 to 4 of
Presented by Shri Bhuj Bhushan Sharma
dated 23-6-04

VERSUS

RESPONDENTS : (Plaintiff and defendant No. 2 to 5)

1. Vinod S/o premchand Agrwal Age 38 year R/o Kotra road Raigarh (C.G.)
2. Rohit Kumar S/o Girja Prasad Dewangan age 57 year R/o 2 ahirnesh Factory State Javaher Nager Bhandra (Maharashtra)
3. Roupchand s/o Girja Prasad Dewangan age 54 years.
4. Smt. Sushma Dewangan W/o Chandrika Dewangan age 38 years.
5. Narsingh Dewangan S/o Girja Prasad Dewangan age 45 year
6. Hement Dewangan S/o Girja Prasad Dewangan age 37 year

   No.2 to 6 All residence Palace Road Near Aadarsh Lodge Raigarh Tha. & Distt. Raigarh
7. State of C.G. through Collector Raigarh (C.G.)

सपथ आयुक्त 22/6/04 बिलासपुर तहसील छत्तीसगढ़

RECEIVED COPY 23/6/04
Clerk to A. G. Bilaspur

(2) 4

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

FOR ISSUANCE OF WRITS IN NATURE OF MANDAMUS, CERTIORARI, PROHABITATION, etc. AND/OR FOR ORDER AND/OR DIRECTION/DIRECTIONS IN NATURE OF WRIT.

(55)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1852 of 2004

Ratanlal Kedia and two others

- Versus -

Vinod and six others

POST FOR ORDER ON 26th AUGUST, 2004

Sd/-
L.C. Bhadoo
Judge

(56)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1852 of 2004

Ratanlal Kedia and two others

- Versus -

Vinod and six others

Present: -

Mr. Amit Sharma, Advocate: For the petitioners.

Mr. Sumesh Bajaj, Deputy Govt. Advocate: For the State/respondent No.7

ORDER

(Passed on 26th August, 2004)

L.C. Bhadoo, J.

1. The petitioners have preferred this writ petition under Article 227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 29.4.2004 passed by the 1st Additional District Judge, Raigarh, in Miscellaneous Civil Appeal No.2/2004, whereby he affirmed the order dated 7.2.2004 passed in Civil Case No.103-A/2004 by the Civil Judge, Class-I, whereby he allowed the application of respondent No.1 herein for temporary injunction filed under Order 39 Rule 1 & 2 of the C.P.C. and directed the petitioners herein to maintain status quo on the disputed land.

2. Brief facts leading to filing of this writ petition are that respondent No.1 herein filed a suit for specific performance of the contract for sale and also for temporary injunction against the petitioners herein and respondents No.2 to 6 in the Court of Civil Judge, Class-I, Raigarh, mentioning therein that there is a land in Village: Gorkha, Patwari Halka No.14, Tehsil & District: Raigarh bearing Khasra No.41/2 admeasuring area 0.449 hectares of which Late Girija Prasad was the original owner who on 3.3.2003 entered into a contract for sale of the said land with respondent No.1 herein to sell the same on a consideration of Rs.45,000/-, out of which Rs.25,000/- was paid as advance and the possession of the land was also delivered by Girija Prasad to

him. It was further decided that Girija Prasad after accepting Rs.20,000/- by 31st October, 2003, will execute the registered sale deed in favour of respondent No.1 herein. It has further been mentioned that before 31st March, 2003, respondent No.1 herein many times made attempts and requested Girija Prasad to accept Rs.20,000/- and execute the sale deed, on this Girija Prasad replied 'what is the urgency in the matter' and avoided the execution of the sale deed and said that since his health is not good after recovering, he will execute the sale deed. On 21st April, 2004, respondent No.1 issued notice through his Advocate for specific performance of the contract, on this petitioner No.2 herein informed respondent No.1 herein that Girija Prasad has already executed the sale deed of the said land on 22.9.2003 in favour of the petitioners herein. When respondent No.1 herein went to see the land in question on 27.1.2004, he found that on a portion of the said land i.e. 12 x 30 sq. ft., the petitioners herein were digging foundation for construction of shop and on objection by respondent No.1 herein they did not accede his request, on the contrary they threatened him. On this, respondent No.1 herein filed a suit for specific performance and for temporary injunction.

3. Learned Civil Judge after considering the documents of the parties vide its order dated 7th February, 2004, directed the petitioners herein to maintain status quo on the land and held that as per the document for the contract for sale dated 3.3.2003, the possession was delivered by Late Girija Prasad to respondent No.1 herein. Learned Civil Judge has rejected the plea of the petitioners herein that the said document for the contract for sale was forged. He observed that in reply the petitioners herein have not mentioned anything that as to how the said document was forged and even they have not denied the signature of Girija Prasad on contract for sale. The reply of the petitioners herein is that at the time of sale the possession was delivered to them and in pursuance of that registration they got the land entered in their names and also they got the land converted from agricultural to residential purpose, which has been rejected by the trial Court on the ground that mere conversion of land and entering their names in the record as also the execution of the sale deed cannot be termed as that the possession was handed over to the petitioners herein. Learned Civil Judge further observed

that except parties to the litigation, either of the parties had not filed any affidavit of the other independent person in order to prove their possession. Therefore, the learned Civil Judge reached the conclusion that prima facie case was made out in favour of respondent No.1 herein and that he was in possession. He also decided the balance of convenience and irreparable loss in favour of respondent No.1 herein. The appellate Court also reached the same conclusion and affirmed the order passed by the trial Court i.e. Civil Judge.

4. I have heard Mr. Amit Sharma, learned counsel for the petitioners. He argued that the finding of both the Courts below is erroneous as there was nothing on record to show that respondent No.1 herein was in possession of the land in question. He submitted that the petitioners have constructed building on the land, which is incomplete, and if the petitioners are not allowed to complete the same, they will be put to irreparable loss. He further submitted that without proving the possession, respondent No.1 herein was not entitled for temporary injunction in his favour.

5. I have perused the order of the learned Civil Judge as well as that of the appellate Court. Both the Courts have categorically after considering documents and affidavits of the parties reached the conclusion that the possession of the land was delivered to respondent No.1 herein and he was in possession even on the day of suit, therefore, the petitioners were directed to maintain status quo on the land. As has been held by the Hon'ble Apex Court in the matter of **Surya Dev Rai v. Ram Chander Rai and others** reported in **(2003) 6 SCC 675** that,

> "To be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising the jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging into a long drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error."

It is further held that

> "the jurisdiction was not available to be exercised for indulging into re-appreciation or evaluation of evidence or

correcting the errors in drawing inferences like a Court of appeal".

6. Therefore, looking to the above law laid down by the Hon'ble Apex Court, if we look into the facts of the present case, both the Courts below have arrived at the conclusion after scrutinizing the documents and affidavits of the parties that the possession was given to respondent No.1 herein at the time of entering into contract for sale. In the circumstances, the petitioners herein should maintain status quo on the land in question cannot be disturbed or set aside by this Court under Article 227 of the Constitution of India. As the orders passed by both the Courts below are reasoned, now this Court cannot appreciate or go into detail in view of the above judgment. This Court cannot act as an appellate Court unless the error is self-evident or apparent on the face of record or view taken is against the settled principles of law or the order is perverse. Learned counsel for the petitioner was not able to point out any such illegality or infirmity or incorrectness committed by both the Courts below.

7. Therefore, I am of the opinion that this writ petition has no force and the same is liable to be dismissed. Accordingly, the writ petition is hereby dismissed at the admission stage itself. No order as to costs.

Sd/-
L.C. Bhadoo
Judge

Soma